

REMARKS

Claims 1-16, 18-33 and 35 are pending in the application and have been rejected. Applicant has amended Claims 1 and 19, to more clearly point out the present inventive concept.

Claims 1-12, 16-18, 19-30, and 33, 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of *Hudetz et al.*, *Nelson* and *Russell*. This rejection is respectfully traversed with respect to the claims as currently presented.

Applicant appreciates the Examiner's detailed explanation and especially the Examiner's willingness to provide a clear construction of the claims. This was an issue in the previous appeal in that both the BPAI and the previous Examiner had inconsistencies. The Examiner has clearly stated that the "portable triggering device" in the claim for the purpose of supporting a rejection is considered to be the barcode in *Hudetz* and such other similar applications. The "activation" is thus deemed to be the device causing extraction of the unique code from the portable triggering device and the Examiner specifically states that this is the barcode reader or the like. This is very helpful in responding to this Office Action.

In general, the basic position of Applicant with respect to distinguishing over *Hudetz* and any combination of an RFID device is distinct differences therebetween. Turning first to *Hudetz*, *Hudetz* is a system that provides a barcode reading for doing nothing more than reading a passive optical barcode that is disposed on a product for identifying products. The purpose for doing this in *Hudetz* is specifically to obtain some type of information or the such about a given product. Typically, a given product such as a can of soup or the such would have a barcode associated therewith. It is noted that a particular barcode for a can of soup is disposed on each can of soup. Therefore, if a particular brand of soup were to have this barcode on it, every can in that brand would have such a barcode. Thus, *Hudetz* clearly desires to read a generic barcode such that information can be stored in some type of relational database. To facilitate such retrieval of information, it is necessary for the *Hudetz* scanner to illuminate a surface and then move the scanner across the surface until the sequence of light and dark bars associated with the bar code are encountered, at which time the information in the bar code can be extracted. There is no activation of the bar code by the scanner. The Examiner considers it obvious to at least combine *Hudetz* and *Nelson* to substitute the RFID tag of *Nelson* for the barcode in *Hudetz*. Applicant

AMENDMENT AND RESPONSE

contends that the Examiner has not shown how such a substitution would be obvious. First, the RFID tag of *Nelson* is a device that could be attached to a human or an animal for the purpose of associating the identification code in the tag with the code recipient for maintaining an independent record of the identification code associated with the code recipient. There is no indication that substituting of this particular tag with a barcode, which provides a generic association with some type of product would be obvious to one skilled in the art and would be predictable. Applicant believes that this is the key distinction between the *Hudetz* reference and the *Nelson* reference, i.e., why would a person skilled in the art at the time of the invention of this device look to the teachings of *Hudetz*, which teaches a barcode scanner for scanning a barcode for the purpose of determining information about a product using a barcode already preassociated with the product by the manufacturer of the barcode and which barcode is readily perceivable, then rely on the teachings of *Nelson* to substitute the tag for the barcode. The tag is not something that an individual would have knowledge as to the operation of such that it could be easily scanned with a scanner; rather, there must be some inherent knowledge of how the tag works in order to access information therein. Further, this information is very unique to a particular system. The general purpose of *Hudetz* would not lead one skilled in the art to take the next step, i.e., combine such with the tag. As such, this seems to be the single issue that needs to be determined.

Applicant specifically requests that an interview be granted with respect to this particular issue in order to develop a very clear record in the event that it is necessary to again take this to appeal. Further, Applicant believes that it may necessary to provide an affidavit of an expert testimony as to what the level of skill in the art at the time of the invention was in this area and what considerations would be necessary in order for such a substitution to be made. At present, there is no evidence in the record as to what the level of skill in the art is at the time of the invention nor as to what one with such a skill would find to be a predictable course of action.

In view of the above, Applicant respectfully requests the Examiner to consider withdrawal of the rejection with respect to Claims 1-12, 16-18, 19-30, and 33, 35.

For the remaining rejections, rejections of Claims 13-15, 31-32, dependent claims, under 35 U.S.C. § 103(a) in view of the combination of *Hudetz*, *Nelson*, *Russell* and *Wellner*, the

addition of *Russell* and *Wellner* do not cure the deficiencies with respect to the combination of *Hudetz* and *Nelson*. The withdrawal of such rejection is therefore respectfully requested.

The claims have also been rejected in view of the combination of the *Buckley* patent and the *Schmitt* patent. The *Buckley* patent, again, is directed toward the barcode aspect and does not provide any teachings that would result in such combination with *Schmitt*. The combination of these two references suffers from the same deficiencies as with respect to the combination of *Hudetz* and *Nelson*. Therefore, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection with respect to Claims 1-4, 8, 9, 10-11, 16, 18-22, 24, 26, 28-29, 33 and 35.

Applicant has now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicant respectfully requests full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/RPXC-25,356 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
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